

RECEIVED
CENTRAL FAX CENTER
JUL 07 2006

REMARKS

Summary of the Office Action and this Amendment

On page 2 of the office action mailed 3/10/06, the examiner states:

Claims 1-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-16 are not limited to tangible embodiments. In view of applicants' disclosure, specification page 4, paragraph 31, the medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments for example [DVD-R, DVD+R, hard drive, memory] and intangible embodiments for example [digital and/or analog communication links, which may be electrical, optical, and/or wireless]. As such, the claim is not limited to statutory subject matter and is therefore non-statutory.

Additionally, on page 3 of the office action, the examiner states: "Claims 17-28 are allowed."

In this Amendment, the applicant has amended claims 1-16. No new matter has been added. Claims 1-28 are now pending in the application.

Claim Rejections - 35 U.S.C. 101

As mentioned above, on page 2 of the office action mailed 3/10/06, the examiner states:

Claims 1-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-16 are not limited to tangible embodiments. In view of applicants' disclosure, specification page 4, paragraph 31, the medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments for example [DVD-R, DVD+R, hard drive, memory] and intangible embodiments for example [digital and/or analog communication links, which may be electrical, optical, and/or wireless]. As such, the claim is not limited to statutory subject matter and is therefore non-statutory.

The applicant respectfully notes that there is no paragraph numbered 31 on page 4 of the specification, which is cited by the examiner in the office action in the paragraph above.

In this amendment, the words "signal bearing" have been deleted from independent claims 1, 6, and 16. Claims 1, 6, and 16, as amended, now recite "[a] computer program product comprising a computer readable medium", rather than a "signal bearing" medium.

More specifically, the preamble of claim 1 as amended recites:

A computer program product comprising a computer readable ~~signal bearing~~ medium embodying a computer readable program, wherein the computer readable program when executed on a computer causes the computer tangibly ~~embodying a program of machine-readable instructions~~

Application No. 10/607,118
Attorney Docket No. SJO920020150US1

-13-

~~executable by a digital processing apparatus~~ to perform a method for replacing a failed storage device, the method comprising the following operations:

The preamble of claim 6 as amended herein recites:

A computer program product comprising a computer readable signal-bearing medium having a computer readable program, wherein the computer readable program when executed on a computer causes the computer tangibly embodying a program of machine-readable instructions
~~executable by a digital processing apparatus~~ to perform a method for replacing a failed storage device in a storage device array, the method comprising the following operations:

The preamble of claim 16 as amended herein recites:

A computer program product comprising a computer readable signal-bearing medium tangibly embodying a program of machine-readable instructions executable by a digital processing apparatus to perform a method for replacing a failed storage device in a storage device array, the method comprising the following operations:

These amendments to claims 1, 6, and 16 have been made to make it more clear that the "computer program product", as claimed, is limited to tangible embodiments. Accordingly, the applicant submits that the claims as amended are directed to statutory subject matter. In this regard, MPEP § 2106 states, "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.... [A] claimed computer-readable medium

encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory." MPEP § 2106 (8th ed., rev. 4, Oct. 2005). See, In re Lowry, 32 F.3d 1579 (Fed. Cir. 1994). Accordingly, the applicant respectfully submits that claims 1-16 are directed to statutory subject matter, and that the rejection of claims 1-16 under 35 U.S.C. 101 should be withdrawn.

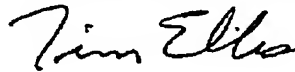
Amendments, and Dependent Claims in General

The applicant submits that all of the claims that are dependent upon claims 1 and 6 are novel and nonobvious for at least the reasons discussed above with regard to the independent claims. Some of the claim amendments in this amendment were made to clarify the wording.

Conclusion

In summary, the applicant respectfully submits that the claims as presented herein are directed to statutory subject matter. In conclusion, the applicant respectfully submits that the application is in condition for allowance, and applicant requests reconsideration and further examination, and allowance of the application. Any additional fees required in connection with this amendment that are not specifically provided for herewith are authorized to be charged to Deposit Account No. 09-0466 in the name of International Business Machines Corporation.

Respectfully submitted,



Timothy N. Ellis
Reg. No. 41,734
Attorney for Applicant
telephone (858)455-7977